

LATHAM & WATKINS LLP

MARVIN S. PUTNAM (California Bar No. 212839)

(pro hac vice pending)
marvin.putnam@lw.com

ROBERT J. ELLISON (California Bar No. 274374)

(pro hac vice pending)
robert.ellison@lw.com
10250 Constellation Blvd., Suite 1100
Los Angeles, California 90067
Telephone: (424) 653.5500
Facsimile: (424) 653.5501

MORAN BRANDON BENDAVID MORAN

JEFFERY A. BENDAVID (Nev. Bar No. 6220)

j.bendavid@moranlawfirm.com
630 South 4th Street
Las Vegas, Nevada 89101
Telephone: (702) 384.8424
Facsimile: (702) 384.6568

Attorneys for Plaintiffs

Peter Lik and Peter Lik IP Company, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PETER LIK, an individual, and PETER LIK
IP COMPANY, LLC, a Nevada limited
liability company,

Plaintiffs,

v.

RICHARD MARCHITTO, an individual,
RICHARD MARC GALLERY LLC, a
Nevada limited liability company, and DOES
1-10, inclusive.

Defendants.

CASE NO.

COMPLAINT FOR:

- (1) DIRECT AND INDIRECT COPYRIGHT
INFRINGEMENT;**
(2) TRADEMARK INFRINGEMENT; AND
(3) FALSE DESIGNATION OF ORIGIN

DEMAND FOR JURY TRIAL

1 Plaintiffs Peter Lik and Peter Lik IP Company, LLC, for their complaint against
2 defendants Richard Marchitto, Richard Marc Gallery LLC and Does 1-10, inclusive, allege as
3 follows:

4 **JURISDICTION**

5 1. This is a civil action for copyright infringement under the federal Copyright Act
6 of 1976 (as amended), 17 U.S.C. section 101 et seq.; and trademark infringement and false
7 designation of origin under the Lanham Act, 15 U.S.C. sections 1114, 1125.

8 2. This Court has subject matter jurisdiction over the Copyright Act claim under 28
9 U.S.C. sections 1331 and 1338, and over the Lanham Act claims under 15 U.S.C. section 1121
10 and 28 U.S.C. section 1338.

11 3. This Court has personal jurisdiction over defendants because, on information and
12 belief, they reside, conduct substantial business and maintain offices in this State.

13 **VENUE**

14 4. Venue in this Court is proper under 28 U.S.C. section 1391(b)(1) because
15 defendants reside in this District and all defendants are residents of Nevada, and 28 U.S.C.
16 section 1391(b)(2) because a substantial part of the events giving rise to the claims alleged in this
17 complaint occurred in this district.

18 **THE PARTIES**

19 5. Peter Lik is a citizen of the state of Nevada.

20 6. Peter Lik IP Company, LLC ("Lik IP Co.") is a Nevada limited liability company,
21 with its principal place of business in Las Vegas, Nevada.

22 7. On information and belief, defendant Richard Marchitto is a citizen of the state of
23 Nevada, domiciled at 3027 Via Sarafina Drive, Henderson, Nevada 89052.

24 8. Defendant Richard Marc Gallery LLC is a Nevada limited liability company, with
25 its principal place of business in Las Vegas, Nevada. On information and belief, defendant
26 Richard Marchitto is the sole owner, registered agent, and officer of defendant Richard Marc
27 Gallery LLC, and as sole owner and officer, has the right and ability to control, and a direct
28 financial interest in, its activities.

10. Peter Lik is an internationally renowned artist and pioneer in the field of landscape photography. His work has been on public display for the last three decades, from exhibits at the Smithsonian in Washington, D.C. to the television documentary series *From the Edge With Peter Lik*, which followed the photographer around the world in search of material for his iconic landscape panoramas. Over his 30-year career, Lik has earned hundreds of prestigious awards and accolades for his work, including the title of Master Photographer from both the Australian Institute of Professional Photography and Professional Photographers of America. Lik has also been awarded fellowships from the British Institute of Professional Photographers and the Royal Photographic Society. Lik's photographs are among the most widely-recognizable photographs in the world.

12. From April 3, 2006 to July 15, 2009, defendant Richard Marchitto was an employee at the Peter Lik Gallery in Las Vegas, Nevada. During this time, Marchitto had direct access to plaintiffs' works and proprietary information, including the creative and technical processes by which plaintiffs' works are created.

13. Following his employment at the Peter Lik Gallery, Marchitto sought to capitalize

on his insider knowledge and Lik's international acclaim by copying and selling photographs that brazenly and unapologetically infringe Lik's copyrighted works. On or about August 1, 2016, plaintiffs discovered that Marchitto had copied Lik's copyrighted works and was marketing and displaying them on his website, www.marcgallery.com, and in his gallery, the Richard Marc Gallery, located in the Planet Hollywood Resort and Casino in Las Vegas, Nevada. On information and belief, Marchitto solely owns and is the sole officer of Richard Marc Gallery LLC, which in turn solely owns and operates the Richard Marc Gallery and Richard Marc Gallery website.

14. On information and belief, Marchitto, as the sole owner and officer of Richard Marc Gallery LLC, directs the creation, marketing, display, and sale of works offered through the Richard Marc Gallery and its website, and thus exclusively controls and benefits from the activities of Richard Marc Gallery LLC. On information and belief, Marchitto, as the sole owner and officer of Richard Marc Gallery LLC, personally receives financial and other benefits, including critical acclaim, resulting from the marketing, display, and sale of the infringing works through the Richard Marc Gallery and website.

15. Marchitto's website markets and displays at least 20 photographs that are identical or nearly identical to Lik's copyrighted works.

16. The copyright registrations of Lik's works (the "Copyrighted Works") infringed by defendants, of which plaintiffs are currently aware, are identified in Figure 1 below.

Title of Work	U.S. Copyright Registration Number	Date
Eternal Flame	VA 0001778295	2011
Stone Temple	VA 0001770179	2011
The Chief	VA 0001770185	2011
Turning Time	VA 0001770035	2011
Pristine	VA 0001826823	2012
Echoes of Silence	VA 0001770012	2011
Neptune Beach	VA 0001825666	2012
Mystic Valley	VA 0001770180	2011
Tree of Zen	VA 0001919843	2014
Sacred Sunrise	VA 0001770056	2011
Temple of Sinawava	VA 0001773790	2011
Heaven on Earth	VA 0001821272	2012

Secret Veil	VA 0001825504	2012
Dark Side of the Moon	VA 0001770164	2011
Fire Rock	VA 0001769968	2011
Tranquil Blue	VA 0001919842	2014
Coastal Dreams	VA 0001920693	2014
Harmony	VA 0001829765	2012
Desert Lights	VA 0001778286	2011
Angels Heart	VA 0001769957	2011

(Figure 1)

17. Attached hereto as Exhibit A is a series of screenshots of each of Lik's Copyrighted Works listed in Figure 1 above appearing side-by-side with the infringing works sold by defendants and identified on their website. In one of the side-by-sides appearing in Exhibit A, "The Chief," defendants copied both the photograph and title of the work (*see* Figure 2 below).

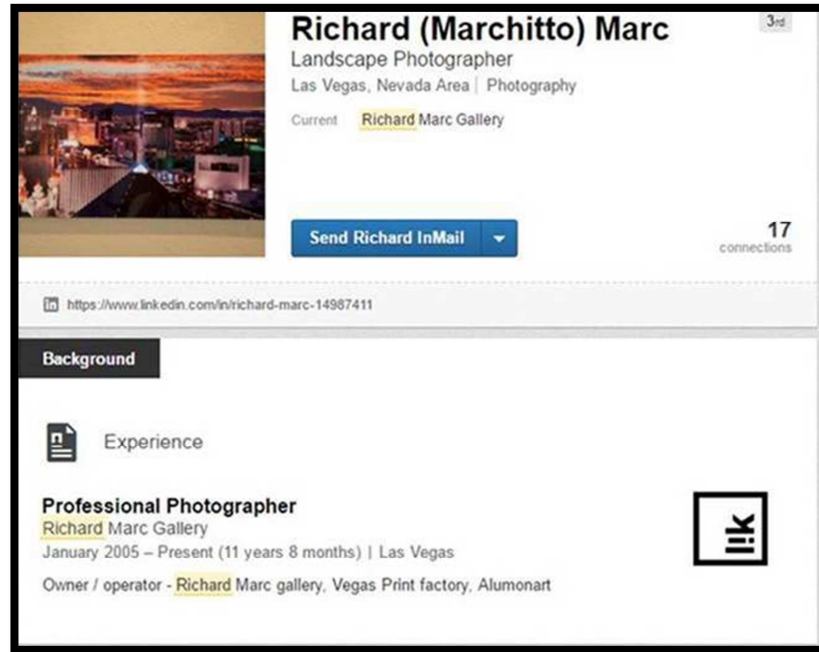


(Figure 2)

18. On or about August 1, 2016, plaintiffs also discovered Marchitto was using on his LinkedIn page plaintiffs' logo, the Lik® mark—a registered trademark wholly comprised of a

stylized version of *Lik's last name*—in connection with the Richard Marc Gallery. The Richard Marc Gallery is not, and never has been, affiliated with Lik or Lik IP Co.

19. Marchitto's LinkedIn page, displaying the Lik[®] mark, appears as follows:



(Figure 3)

20. On or around August 10, 2016, plaintiffs sent defendants a cease and desist letter regarding their unlawful and unauthorized conduct. Defendants did not respond or cease their infringing conduct.

21. This unlawful conduct must stop. Defendants' website and gallery market, display and distribute works that clearly infringe Lik's copyrights, in violation of 17 U.S.C. section 501. And Marchitto's LinkedIn page uses the Lik[®] mark without authorization, in violation of 15 U.S.C. sections 1114 and 1125(a).

FIRST CLAIM FOR RELIEF

Direct And Indirect Copyright Infringement: 17 U.S.C. § 501

22. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs.

23. Lik owns valid and enforceable copyrights in the Copyrighted Works, which are creative works of original authorship. Lik has copyright registrations for the Copyrighted

1 Works. The copyright registrations for the Copyrighted Works cover the full photograph,
2 including the artistic compilation therein, depicted in the work.

3 24. Through the acts alleged above, defendants and others acting in concert with them
4 violated Lik's exclusive rights to reproduce, make copies of, distribute and display the
5 Copyrighted Works, by, among other things, copying and displaying the Copyrighted Works on
6 defendants' website and in defendants' gallery without a license, and/or materially contributing
7 to others' efforts to do so, in violation of 17 U.S.C. section 106.

8 25. Defendants and those acting in concert with them were not authorized to copy,
9 download, reproduce, distribute, create derivative works from, or display the Copyrighted
10 Works. Defendants have no valid defense for their unauthorized copying, downloading,
11 reproducing, distributing, creating of derivative works, and/or displaying of the Copyrighted
12 Works, including without limitation, a defense based on the fair use doctrine or any claim to
13 have been joint author or joint authors of any of the Copyrighted Works.

14 26. Defendants and those acting in concert with them knew or should have known
15 that copying, distributing, displaying, and/or creating derivative works of and from the
16 Copyrighted Works—which they had no license to copy, distribute, display, or create derivative
17 works from—or controlling, directing, intentionally encouraging, inducing, or materially
18 contributing to others' efforts to do so, infringed Lik's exclusive rights in the Copyrighted
19 Works.

20 27. On information and belief, defendant Marchitto materially contributes to the
21 unauthorized use of the Copyrighted Works by some or all other defendants by, among other
22 things, creating works that infringe Lik's exclusive rights in the Copyrighted Works and
23 marketing those works through the Richard Marc Gallery and website. In other words, but for
24 Marchitto's infringements, his gallery and website (and those galleries and websites of the Doe
25 defendants) would not have content to market and sell.

26 28. Similarly, on information and belief, defendant Richard Marc Gallery LLC
27 materially contributes to the unauthorized use of the Copyrighted Works by some or all other
28 defendants by, among other things, marketing the Copyrighted Works through the Richard Marc

1 Gallery and website. In other words, by marketing and selling the Copyrighted Works, the
2 Richard Marc Gallery and website are encouraging and incentivizing Marchitto to continue
3 infringing and enabling the Doe defendants to infringe as well.

4 29. To the extent that the Doe defendants were direct infringers of the Copyrighted
5 Works as described herein, defendants are indirectly liable for such direct infringements on all
6 known theories of indirect liability, including without limitation vicarious liability, contributory
7 liability, and “inducement” liability.

8 30. Defendants have, or at relevant times had, the right and ability to control the
9 infringing conduct of their agents, affiliates, and co-conspirators. And defendants have received,
10 and continue to receive, a direct benefit (financial and otherwise) from the infringing conduct of
11 their agents, affiliates, and co-conspirators.

12 31. Defendants had knowledge of the conduct of their agents, affiliates, and co-
13 conspirators that constitutes infringement, and materially contributed to that infringement, in the
14 manner described herein. And defendants deliberately and shamelessly induced that
15 infringement for their own gain, as described herein.

16 32. Lik is entitled to damages from defendants in an amount to be proven at trial,
17 including profits attributable to the infringement not taken into account in computing actual
18 damages under 17 U.S.C. section 504(b). Lik is entitled to statutory damages under 17
19 U.S.C.

20 section 504(c) based on defendants’ infringements. Lik is entitled to its attorneys’ fees
21 and costs pursuant to 17 U.S.C. section 505.

22 33. Defendants’ infringement of Lik’s exclusive rights has also caused Lik irreparable
23 injury. Unless restrained and enjoined, defendants will continue to commit such acts. Lik’s
24 remedies at law are not adequate to compensate it for these inflicted and threatened injuries,
25 entitling it to remedies including injunctive relief as provided by 17 U.S.C. section 502 and an
26 order impounding or destroying any and all infringing materials pursuant to 17 U.S.C. section
27 503.

28

SECOND CLAIM FOR RELIEF

Trademark Infringement: 15 U.S.C. § 1114

34. Plaintiffs reallege and incorporate by reference all of the factual allegations set forth above.

35. Lik IP Co. owns the Lik[®] mark, which was registered with the United States Patent and Trademark Office in 2012 with the registration number 4134889.

36. Defendants do not have authorization, license or permission from plaintiffs to market and sell their services under the Lik[®] mark or any confusingly similar mark.

37. Defendants were on constructive notice that the Lik[®] mark was owned by Lik IP Co. based on Lik IP Co.'s longstanding federal registration. In fact, it is clear from defendants' LinkedIn page that they were purposely trading off the famous Lik[®] mark. Thus defendants' unauthorized use of the Lik[®] mark was knowing, intentional and willful.

38. Defendants' use of the Lik[®] mark in interstate commerce constitutes a reproduction, counterfeit, copy, or colorable imitation of a registered trademark of Lik IP Co. in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion or mistake, or to deceive. For example, viewers, users or customers of defendants' LinkedIn page, website, services or gallery are likely to be confused as to whether defendants' LinkedIn page, website, services or gallery are associated with or approved by plaintiffs.

39. As a direct and proximate result of defendants' misconduct, plaintiffs have been, and will continue to be, irreparably harmed and injured, and such harm will continue unless enjoined by this Court. Plaintiffs have no adequate remedy at law and are therefore entitled to injunctive relief.

40. Defendants' misconduct has been and is knowing, deliberate, and willful. Pursuant to 15 U.S.C. section 1117(a), defendants' willful use of the Lik[®] mark without excuse or justification makes this an exceptional case, entitling plaintiffs to an award of treble damages and reasonable attorneys' fees and costs.

THIRD CLAIM FOR RELIEF

False Designation of Origin: 15 U.S.C. § 1125(a)

41. Plaintiffs reallege and incorporate by reference all of the factual allegations set forth above.

42. Lik IP Co. owns the Lik[®] mark, which was registered with the United States Patent and Trademark Office in 2012 with the registration number 4134889.

43. Defendants do not have authorization, license or permission from plaintiffs to market and sell their services under the Lik[®] mark or any confusingly similar mark.

44. Defendants were on constructive notice that the Lik[®] mark was owned by Lik IP Co. based on Lik IP Co.'s longstanding federal registration. In fact, it is clear from defendants' LinkedIn page that they were purposely trading off the famous Lik[®] mark. Thus, defendants' unauthorized use of the Lik[®] mark was knowing, intentional and willful.

45. Defendants' use of the Lik[®] mark in interstate commerce constitutes a reproduction, counterfeit, copy, or colorable imitation of a registered trademark of Lik IP Co. in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion or mistake, or to deceive. For example, viewers, users or customers of defendants' LinkedIn page, website, services or gallery are likely to be confused as to whether defendants' LinkedIn page, website, services or gallery are associated with or approved by plaintiffs.

46. As a direct and proximate result of defendants' misconduct, plaintiffs have been, and will continue to be, irreparably harmed and injured, and such harm will continue unless enjoined by this Court. Plaintiffs have no adequate remedy at law and are therefore entitled to injunctive relief.

47. Defendants' misconduct has been and is knowing, deliberate, and willful. Pursuant to 15 U.S.C. section 1117(a), defendants' willful use of the Lik[®] mark without excuse or justification makes this an exceptional case, entitling plaintiffs to an award of treble damages and reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

- A. An injunction prohibiting defendants' unlawful conduct;
- B. An order awarding plaintiffs restitution and damages, including, but not limited to, liquidated, compensatory, statutory, treble damages and punitive damages, as permitted by law;
- C. An order awarding plaintiffs pre-judgment interest;
- D. An order awarding plaintiffs their costs of suit, including, but not limited to, reasonable attorneys' fees, as permitted by law; and
- E. An order awarding plaintiffs such other relief as the Court deems appropriate.

DATED this 16th day of September 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Jeffery A. Bendavid, Esq.

JEFFERY A. BENDAVID, ESQ.

Nevada Bar No. 6220

630 South 4th Street

Las Vegas, Nevada 89101

(702) 384-8424

LATHAM & WATKINS LLP

/s/ Marvin S. Putnam, Esq.

MARVIN S. PUTNAM (pro hac vice pending)

marvin.putnam@lw.com

ROBERT J. ELLISON (pro hac vice pending)

robert.ellison@lw.com

10250 Constellation Blvd., Suite 1100

Los Angeles, California 90067

*Attorneys for Plaintiffs Peter Lik and
Peter Lik IP Company, LLC*

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local Rule 38-1,
plaintiffs demand a trial by jury.

DATED this 16th day of September 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Jeffery A. Bendavid, Esq.

JEFFERY A. BENDAVID, ESQ.

Nevada Bar No. 6220

630 South 4th Street

Las Vegas, Nevada 89101

(702) 384-8424

LATHAM & WATKINS LLP

/s/ Marvin S. Putnam, Esq.

MARVIN S. PUTNAM (pro hac vice pending)

marvin.putnam@lw.com

ROBERT J. ELLISON (pro hac vice pending)

robert.ellison@lw.com

10250 Constellation Blvd., Suite 1100

Los Angeles, California 90067

*Attorneys for Plaintiffs Peter Lik and
Peter Lik IP Company, LLC*